

## United States District Court, Northern District of Illinois

|   |   |   |                   |
|---|---|---|-------------------|
| Name of Assigned Judge<br>or Magistrate Judge | CHARLES P. KOCORAS                                | Sitting Judge if Other<br>than Assigned Judge |                   |
| CASE NUMBER                                   | 08 C 1020   | DATE  | February 26, 2008 |
| CASE<br>TITLE                                 | Antoine McGee (#B-39819) vs. Joseph Burke, et al. |   |                   |

## DOCKET ENTRY TEXT:

The plaintiff's motion for leave to proceed *in forma pauperis* [3] is granted. The court orders the trust fund officer at the plaintiff's place of incarceration to deduct \$11.17 from the plaintiff's account for payment to the clerk of court as an initial partial filing fee, and to continue making monthly deductions in accordance with this order. The clerk shall send a copy of this order to the trust fund officer at the Hill Correctional Center. The clerk is directed to issue summonses for service on the defendants by the U.S. Marshal. The clerk is further directed to send the plaintiff a Magistrate Judge Consent Form and Instructions for Submitting Documents along with a copy of this order.

■ [For further details see text below.]

Docketing to mail notices.

## STATEMENT

The plaintiff, a state prisoner, has brought this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. The plaintiff claims that the defendants, correctional officials and health care providers at the Stateville Correctional Center, violated the plaintiff's constitutional rights by acting with deliberate indifference to his health, safety, and medical needs. More specifically, the plaintiff alleges that correctional officers intentionally let a fire burn in the segregation unit, causing the inmates housed there considerable distress; he further maintains that he was denied needed medical care for his injuries.

The plaintiff's motion for leave to proceed *in forma pauperis* is granted. Pursuant to 28 U.S.C. § 1915(b)(1), the plaintiff is assessed an initial partial filing fee of \$11.17. The trust fund officer at the plaintiff's place of incarceration is authorized and ordered to collect the partial filing fee from the plaintiff's trust fund account and pay it directly to the clerk of court. After payment of the initial partial filing fee, the plaintiff's trust fund officer is directed to collect monthly payments from the plaintiff's trust fund account in an amount equal to 20% of the preceding month's income credited to the account. Monthly payments shall be forwarded to the clerk of court each time the amount in the account exceeds \$10 until the full \$350 filing fee is paid. All payments shall be sent to the Clerk, United States District Court, 219 S. Dearborn St., Chicago, Illinois 60604, attn: (CONTINUED)

mjm

## STATEMENT (continued)

Cashier's Desk, 20th Floor, and shall clearly identify the plaintiff's name and this case number. This payment obligation will follow the plaintiff wherever he may be transferred.

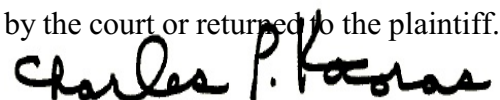
Under 28 U.S.C. § 1915A, the court is required to conduct a prompt threshold review of the complaint. Here, accepting the plaintiff's allegations as true, the court finds that the plaintiff has articulated colorable federal causes of action. "The state must provide an inmate with a healthy, habitable environment." *French v. Owens*, 777 F.2d 1250, 1255 (7<sup>th</sup> Cir. 1985) (citation omitted); *McGee v. Monahan*, No. 06 C 3538, 2007 WL 2728756, at \*9 (N.D. Ill. Sep. 14, 2007). The Eighth Amendment imposes on jail officials a duty to "take reasonable measures to guarantee the safety of the inmates and to protect them from harm. . . ." *Boyce v. Moore*, 314 F.3d 884, 889 (7<sup>th</sup> Cir. 2002) (quoting *Farmer v. Brennan*, 511 U.S. 825, 832-33 (1994)). Intentionally exposing the plaintiff to the harmful effects of a fire may implicate the Constitution. Furthermore, correctional officials and health care providers may not act with deliberate indifference to an inmate's serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Walker v. Benjamin*, 293 F.3d 1030, 1037 (7<sup>th</sup> Cir. 2002).

For the foregoing reasons, while a more fully developed record may belie the plaintiff's allegations, the defendants must respond to the complaint. [It should be noted that the complaint appears to be barred by the two-year statute of limitations applicable to civil rights actions in Illinois. See 735 ILCS § 5/13-202; *Henderson v. Bolanda*, 253 F.3d 928, 931 (7<sup>th</sup> Cir. 2001). However, untimeliness is an affirmative defense that may be waived by the defendants.]

The clerk shall issue summonses forthwith and send the plaintiff a Magistrate Judge Consent Form and Instructions for Submitting Documents along with a copy of this order.

The United States Marshals Service is appointed to serve the defendants. Any service forms necessary for the plaintiff to complete will be sent by the Marshal as appropriate to serve the defendants with process. The U.S. Marshal is directed to make all reasonable efforts to serve the defendants. With respect to former correctional employees who no longer can be found at the work address provided by the plaintiff, the Illinois Department of Corrections shall furnish the Marshal with the defendant's last-known address. The information shall be used only for purposes of effectuating service [or for proof of service, should a dispute arise] and any documentation of the address shall be retained only by the Marshal. Address information shall not be maintained in the court file, nor disclosed by the Marshal. The Marshal is authorized to mail a request for waiver of service to the defendants in the manner prescribed by Fed. R. Civ. P. 4(d)(2) before attempting personal service.

The plaintiff is instructed to file all future papers concerning this action with the clerk of court in care of the Prisoner Correspondent. The plaintiff must provide the original plus a judge's copy of every document filed. In addition, the plaintiff must send an exact copy of any court filing to the defendants [or to defense counsel, once an attorney has entered an appearance on their behalf]. Every document filed must include a certificate of service stating to whom exact copies were mailed and the date of mailing. Any paper that is sent directly to the judge or that otherwise fails to comply with these instructions may be disregarded by the court or returned to the plaintiff.

  
U.S. District Judge